Calendar No. 357

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-218

REAUTHORIZING FEDERAL PHYSICIANS COMPARABILITY ALLOWANCES

SEPTEMBER 1, 1983.—Ordered to be printed
Filed under authority of the order of the Senate on AUGUST 4 (legislative day, AUGUST 1), 1983

Mr. STEVENS, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1009]

The Committee on Governmental Affairs, to which was referred the bill (S. 1009) to reauthorize Federal physicians comparability allowances, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

S. 1009 was introduced by Senator Charles Mathias, Jr., on April 7, 1983, for himself and Senator Ted Stevens. The legislation amends current law and extends for 4 years the authority under which Federal physicians may enter into service agreements and receive additional compensation for entering into such agreements.

It is the purpose of this legislation to allow Federal agencies to again enter into comparability contracts with physicians by extending the period for entering into such contracts from September 30, 1983, to September 30, 1987. Additionally, this legislation allows these contracts to cover periods of time until September 30, 1989. The authority to enter into such contracts under current law expires as of September 30, 1983, and only allows such contracts to run through September 30, 1985.

In addition, the legislation grants relief to 13 physicians who received senior executive service bonuses which exceeded the statutory pay cap from repaying the excess to the Government. Finally, the legislation permanently excludes such bonuses from the statutory pay cap.

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Background and Statement

Public Law 95–603, the Federal Physicians Comparability Allowance Act of 1978, was enacted on November 6, 1978. The act was reauthorized in 1979 and in 1981. That legislation enabled the heads of executive agencies to offer service agreements to certain categories of Federal physicians and dentists in order to alleviate recruitment and retention problems experienced by the agencies.

These agreements with Federal physicians, who are paid primarily under the General Schedule, permit an allowance to the physician in an amount to be determined by the agency head in exchange for a specific period of service with that agency. The amount of that allowance is not to exceed $10,000 per annum. These contracts can only be offered to those categories of physicians in agencies where there is a significant recruitment and retention problem.

During the hearing on the legislation, the Office of Personnel Management submitted a new report of the allowance program. It revealed that approximately 1,300 of the 3,000 Federal physicians serve under these agreements with an average allowance of $8,600. According to the report, there remains widespread support and need for the program:

> All agencies using PCA, the allowance program, (plus seven who currently do not) are in favor of its continuation; eight are neutral; no agency is opposed to its renewal. Some agencies noted specific conditions or medical areas which caused particular difficulty.
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> Agriculture, AID, and NIH expressed most concern about research positions. NIH asserted that only a small percentage of the nation's physicians are capable of conducting first-class research and the government must compete for their skills with private research companies, as well as with medical schools.
>
> Army and Defense were most concerned about their ability to hire and retain certain specialities, e.g., radiology, otolaryngology, and orthopedic surgery. Working in remote areas caused concern at Army, Defense, and Agriculture (Grand Forks, North Dakota); doctors are not typically inclined to locate in these areas.
>
> NASA says that recruiting for aerospace medicine and research is always difficult because very few physicians qualify for this new field of medicine.

The report also reveals surprisingly low staffing success rates for certain types of physicians. For instance, clinicians, administrators, and researchers have staffing success rates of 37, 38, and 42 percent respectively.

The committee is very concerned over whether such significant vacancies are impeding government functions, endangering agency missions or personnel, or diminishing the ability of the Federal Government to maintain its commitments to medical research. The committee urges the Office of Personnel Management to investigate these vacancy rates to determine whether they present a serious problem and, if so, to recommend solutions.

S. 1009 also contains two other sections. One, it incorporates the provisions of another bill, S. 369, introduced by Senator Mathias, which grants relief to certain Federal physicians who received SES bonuses from repaying the excess to the Government. According to testimony taken at the hearing, the 13 named physicians employed by the Department of Health and Human Services all received the maximum allowance of $10,000 as well as a senior executive service bonus.

Current law prohibits a Federal employee from receiving compensation in the form of basic pay, bonuses, and awards in excess of executive level I pay. The combination of these physicians' pay, allowances, and bonuses did exceed the executive level I pay at that time. Current law requires that the excess be returned to the Government.

During the hearing, the Assistant Secretary for Personnel Administration at HHS explained the situation in the following manner:

> This situation is a direct result of the retention of the Level I pay cap of $69,630 when the SES pay cap was raised from a little over $50,000 to $58,500 on January 1, 1982. The cause of the overpayments for the 13 physicians is the SES performance award that each received in December 1981. Were it not for that performance award, the combination of base pay and physicians comparability allowance would not have exceeded the statutory limit of $69,630.
>
> The Department could have reduced their bonus payments to take into account the new base pay, but the Department was not certain what the new base pay levels would be that would be set by Congress. Also, because of an Office of Personnel Management policy which restricted payment of bonuses as well as a Presidential rank in the same year, our bonuses had to be paid no later than December 31 of that year. Had we made bonus payments for fiscal year 1981 performance in calendar year 1982, our very best executives would not have been eligible for consideration for rank awards.
>
> The critical point, then, is that at the time the bonuses were paid to the 13 physicians in late December 1981, neither the employees involved nor the Department were certain what specific overpayments would result. When the potential overpayment situation was discovered, the Department sought a waiver from repayment for the affected executives through procedures established by the General Accounting Office.
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> In response to our request, the Comptroller General ruled that payments in excess of the statutory limit may not be waived by GAO. The GAO authority to grant a waiver applies only to claims of the government arising out of erroneous payments.
>
> Since the bonus payments that were issued were legal when they were issued and properly made, these payments were, therefore, not erroneous.

The committee found that these individuals were being unnecessarily penalized due to regulatory time limitations. Thus, the committee adopted this relief measure for these individuals.

The committee also finds no reason to penalize any senior executive who in the future performs in such an outstanding manner as to earn a reward but to find an arbitrary limitation which prevents him or her from receiving it. Thus, the second provision removes all senior executive service bonuses from being included in the executive level I pay limitation.

Except for the few Federal physicians who receive the maximum allowance and a senior executive bonus, the maximum number of beneficiaries from this provision will be approximately 60 senior executives a year. Currently, executive level I pay is $80,100. The top senior executive salary is $67,200. Only 1 percent of the 6,000 senior executives are eligible for the only bonus which could exceed the executive level I pay, i.e., the $20,000 Presidential awards. Thus, all senior executive awards are removed from the pay limitation.

Evaluation of Regulatory Impact

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

S. 1009 will not have any additional regulatory impact. It does not authorize any additional regulation of activities in the private sector, impose any new recordkeeping or reporting requirements on any segment of the public, or abolish any existing regulations.

Estimated Cost of the Legislation

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Congressional Budget Office has reviewed the cost implications of S. 1009. The following is CBO's estimate of the potential costs of this legislation:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., August 30, 1983.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 202 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the enclosed cost estimate for S. 1009, a bill to extend the Federal Physicians Comparability Allowances Act of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin,
Director.

Congressional Budget Office—Cost Estimate

1. Bill number: S. 1009.

2. Bill title: A bill to reauthorize federal physicians comparability allowances.

3. Bill status: As ordered reported by the Committee on Governmental Affairs on August 1, 1983.

4. Bill purpose: The bill would amend title 5, United States Code, by extending through September 30, 1987, the authority of Federal agency heads to make special bonus pay agreements with physicians employed under the General Schedule and certain other Federal pay plans. The period of service that may be covered by such agreements would be extended through September 30, 1989.

5. Estimated cost to the Federal Government:

Estimated authorization levels (outlays):

Fiscal year:	*Millions*
1983	-----
1984	(1)
1985	$1.0
1986	13.3
1987	14.4
1988	15.6

[1] Less than $500,000.

Most of the costs of this bill are evenly divided between functions 550 and 050. The remainder of the costs are distributed throughout the budget.

Basis of estimate: The Federal Physicians Comparability Allowances Act of 1978 authorizes agency heads to determine categories of physicians in which a significant recruitment and retention problem exists. Special pay allowance agreements may be made with physicians in these categories. Current authority to enter into new agreements will expire on September 30, 1983, while existing agreements may continue in force until September 30, 1985. This bill would extend current authority for 4 years, allowing payment of special pay bonuses up to $7,000 per year for those who have served as Federal physicians for 2 years or less, and up to $10,000 per year for those who have served more than 2 years.

Based on information from the Office of Personnel Management, the CBO estimate assumes that 1,279 physicians, with bonuses averaging $8,570, would be affected. New contracts awarded in 1984 would require less than $500,000, while new contracts in 1985 would require no more than $1 million in budget authority and outlays. For fiscal years 1986 through 1988, no bonuses could be paid without enactment of this bill. Therefore, outlay increases in 1986 through 1988 are estimated by multiplying the bonus amount, adjusted for projected inflation, times the total number of affected physicians. The full amount estimated to be used for bonuses in each of the fiscal years 1984 through 1988 is assumed to be appropriated for that year.

In addition, the bill requires repaying several physicians who, as a result of a recent General Accounting Office ruling, were required to return to the Government sums each were paid in 1982 in excess of the allowable level I Executive Schedule pay cap. This action will have no net budgetary effect, since the amounts collected from each physician will exactly offset the amounts returned.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: David Bashore (226–2880).

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

Rollcall Vote in Committee

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during committee consideration is as follows: 15 yeas; 0 nays.

YEAS	NAYS
Percy	
Stevens	
Cohen	
Durenberger	
Rudman	
Danforth	
Cochran	
Eagleton	
Chiles	
Nunn	
Glenn	
Sasser	
Levin	
Bingaman	
Roth	

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter VIII—Pay for the Senior Executive Service

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§ 5383. Setting individual senior executive pay

(a) * * *

(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections [4507] 5382, [5384,] and 5948 of this title exceed the annual rate payable for positions at Level I of the Executive Schedule in effect at the end of such fiscal year.

CHAPTER 59—ALLOWANCES

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Subchapter IV—Miscellaneous Allowances

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§ 5941. * * *

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§ 5948. Physicians comparability allowances

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(a) * * *

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(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than [September 30, 1983] *September 30, 1987* nor shall any agreement cover a period of service extending beyond [September 30, 1985] *September 30, 1989.*

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IX. Explanation of Amendments

1. The numeral "866" on page 1, line 4, was added at the request of the General Accounting Office to clarify the statutory citation to Public Law 96–122.

2. The words "and the Comptroller General" have been added to page 5, line 13, following the word "Agency" to assure that both FEMA and GAO will be informed of the Retirement Board's findings in the event of a catastrophe.

3. Section (B), page 6, lines 1–10, has been amended at the request of FEMA to clarify that FEMA will make determinations regarding the extent of any catastrophe in the District but will not make any assessment of individual disabilities which may be caused by said catastrophe.

4. Line 12, page 6, has been amended to read "reports from the Board and the Federal Emergency Management Agency," to clarify that the Comptroller General will review both the Board's and FEMA's report on any District catastrophe that affects the number of disability retirements.

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